

## **CHAPTER 13.08**

### **Water Rights Dedication**

#### **13.08.010 Title.**

The ordinance codified in this Chapter shall be known and may be cited as the "City Water Rights Dedication." (Ord. 026-00, 2000; Ord. 1043-97, 1997)

#### **13.08.020 Intent and purpose.**

A. It is the intent and purpose of this Chapter to require the dedication or transfer of water or water rights to the City sufficient to satisfy any new or additional demand for City water service resulting from the extension of water service, annexation of land to the City or change in land use which will require a new or an additional water supply from the City, and thereby to assure an adequate and stable supply of water to all City water users, to ensure the financial stability of the City water utility and to promote the general welfare of the public.

B. Compliance with this Chapter shall be in addition to any other requirements for annexation required by the laws of the State and in addition to any other requirements for subdivision required by the laws of the State or ordinances of the City. (Ord. 026-00, 2000; Ord. 1043-97, 1997)

#### **13.08.030 Definitions.**

As used in this Chapter, unless the context otherwise requires:

*Annexation* means the act of attaching, adding, joining or uniting a parcel of land to the legal entity known as the City of Evans.

*Appurtenant* means belonging to, accessory or incident to, adjunct, appended, annexed to or used in conjunction with.

*Change in land use* shall include expansion of an existing use.

*City* means the City of Evans, Colorado.

*City Council* means the City Council of Evans, Colorado.

*City Manager* means the City Manager of Evans, Colorado.

*City water service* means treated water service furnished by the City.

*Consumptive use* means the amount of water consumed and which does not return to the stream system after use.

*Conveyance of water rights* means the process by which legal title to water rights is transferred by appropriate deed, stock assignment or both.

*Dedicate or dedication* means to appropriate an interest in land or water to some public use made by the owner and accepted for such use by or on behalf of the public.

*Dwelling unit* means any building or portion thereof which contains living facilities, including provisions for sleeping, eating, cooking and sanitation, as required by the International Building Code, for not more than one (1) family.

*Equivalent residential unit (EQR)* means a number related to the volume of raw water needed to serve an average dwelling unit housing 3.5 persons and having not more than two thousand five hundred (2,500) square feet of irrigated area. The EQR unit value assigned to a dwelling unit is one (1). The EQR unit value assigned to other uses is based on the estimated volume of raw water needed to serve such uses as compared to the volume of raw water needed to serve an average dwelling unit having not more than two thousand five hundred (2,500) square feet of irrigated area. The EQR unit value assigned to uses is set forth in the table of EQR's adopted by resolution.

*Extension of water service* means any extension of the City water service for which a tapping charge is assessed or any increase in City water service resulting from a change in use of property, an increased use of property or an increase in irrigated area.

*Group residence* means any building or portion thereof which contains living facilities, including provisions for sleeping, eating, cooking and sanitation for occupancy by other than a family, such as, but not limited to, nursing home, congregate residence, hospital, shelter, convent, monastery, dormitory, fraternity/sorority house, jail and similar facilities. For the purpose of this definition, transient rental units, such as hotels and motels, are not considered group residences.

*Historical use affidavit* means a document which sets forth the following information concerning any water right, including shares in a ditch or reservoir company or contract rights to water, proposed for dedication or transfer to the City:

1. The names and addresses of the owners;
2. The amount of each water right or the number of shares of stock or contract rights;
3. If the water right is used for irrigation, the number of acres presently being irrigated and a legal description or map of the acreage irrigated;
4. A copy of the stock certificate in any ditch or reservoir company or the certificate for a contract right to water which furnishes water and (unless this requirement is waived by the Director of Public Works) all decrees or judgments determining or adjudicating each water right proposed for dedication or transfer to the City and any other water rights appurtenant to the property;
5. A copy of the documents by which the present owners of each water right received title to the water right proposed for dedication or transfer to the City and any other water rights appurtenant to the property;
6. A copy of all diversion records for each water right proposed for dedication or transfer to the City (unless this requirement is waived by the Director of Public Works); and
7. A description of the historical use of the water right, including the amount and time of diversions and, if the use was irrigation, a legal description of the land or lands historically irrigated by the water right and the years the land or lands were irrigated, the type of irrigation, the number of acres irrigated, the crops grown and a description of any other water rights used on the land irrigated.

*Laundromat* means one (1) or more automatic coin-operated machines for the washing of clothes, including common use machines in apartment complexes.

*Lease* means any grant for permissive use which results in the creation of a landlord-tenant relationship.

*Person* means an individual, a partnership, a corporation, a municipality or any other legal entity, public or private.

*Sufficient priority* means that a water right has a date as of which it is entitled to use water in relation to other water rights deriving their supply from the same source which is sufficiently senior that it may reasonably be expected to provide a dependable water supply for the requirements of this Chapter. Factors to be considered in making this determination shall include, but not by way of limitation, the appropriation date and adjudication date of the water right, the decreed uses, the historical use of the water right, the physical flow available and the administrative practices of the office of the State Engineer.

*Transfer water or water rights* means the conveyance of legal title to water or water rights to the City, including all proceedings required under the laws of the State to change a water right so that it can be used by the City for municipal use.

*Water and Sewer Board* means the Water and Sewer Board of Evans, Colorado.

*Water right* means a decreed right to use in accordance with its priority a certain portion of the waters of the State by reason of the appropriation of the same. It shall include both direct-flow and storage rights. (Ord. 026-00, 2000; Ord. 1043-97, 1997)

#### **13.08.040 Dedication or transfer requirement.**

A. From and after the effective date of this Chapter, any person who seeks approval of any of the following:

1. An extension of water service;
2. Annexation of land to the City;

3. Any change in land use, within or outside the limits of the City, if such change in land use will increase the demand for City water service, shall dedicate or transfer to the City a water allotment contract with the Northern Colorado Water Conservancy District (C-BT contract) for sixty-five hundredths (0.65) of an acre-foot (which will yield an average of approximately forty-six hundredths (0.46) of an acre-foot) for each EQR unit calculated in accordance with Subsection D below, provided that the Director of Public Works, with the approval of the Water and Sewer Board, may accept water rights (including shares in a ditch or reservoir company or contract rights to water) of sufficient priority to produce, after dedication or transfer to the City, an amount of water equivalent to a C-BT contract for sixty-five hundredths (0.65) of an acre-foot for each EQR unit and which will be available for diversion at a point or points of diversion as the City may designate for use by the City for municipal purposes; provided that the consumptive use of the proposed use or uses will not be greater than consumptive use for residential use and wastewater from in-house or in-building use will be treated by the City's municipal wastewater treatment facilities or waste treatment facilities of equal efficiency and similar in return flow patterns. If the consumptive use of the proposed use or uses will be greater than residential use or wastewater from

in-house or in-building use will not be treated by the City's municipal wastewater treatment facilities or by waste treatment facilities of equal efficiency and similar in return flow patterns, the Director of Public Works shall increase the dedication or transfer requirement so that, after dedication or transfer of such water rights to the City, the water rights to be dedicated or transferred will produce an amount of water per year for each EQR unit which is sufficient to ensure an adequate supply of water to satisfy the proposed use or uses. In the case of a request for annexation of land to the City, the person who seeks approval of the annexation shall comply with this Section. Water under a C-BT contract shall not be accepted to satisfy the requirement of this Subsection without the approval of the Northern Colorado Water Conservancy District.

B. Any person required to dedicate or transfer water or water rights to the City by Subsection A above, shall designate, on forms to be prescribed by the Director of Public Works, all water or water rights proposed to be dedicated or transferred to the City, and shall give a legal description of the land for which an extension of water service is requested or for which approval of annexation or a change in land use is sought; and, in addition, shall specify the proposed use or uses for which City water service is requested and the number of EQR units required for such use or uses. If water rights (including shares in a ditch or reservoir company or contract rights to water) are proposed to be dedicated or transferred to the City, the form shall be accompanied by an historical use affidavit, except that if the total number of EQR units is greater than three hundred (300) EQR units, no historical use affidavit shall be required, but an engineering analysis, acceptable to the City, of the historical use of the water rights proposed for dedication or transfer to the City shall be required.

C. Upon receipt of a form designating water rights proposed to be dedicated or transferred to the City, accompanied by an historical use affidavit or an engineering analysis for each water right, the Director of Public Works shall make a determination as to whether or not the water rights are sufficient to satisfy the requirements of Subsection A above. In determining whether or not the water rights are sufficient to satisfy the requirements of Subsection A above, the Director of Public Works shall consult with a person knowledgeable in water rights.

D. Except as provided in Subsections E and F below, the Director of Public Works shall make the determination as to whether or not any water rights to be dedicated or transferred to the City are sufficient to satisfy the requirements of Subsection above based on the number of EQR units required for the proposed use or uses as determined from the Table of EQR Units. If at any time in the future any person required by this Chapter to dedicate or transfer water or water rights to the City subsequently makes a change in the use of property provided with City water service which would result in a greater number of EQR units than determined by the Director of Public Works under this Chapter, no water service shall be furnished unless additional water or water rights sufficient to comply with the provisions of this Chapter are dedicated or transferred to the City.

E. In the case of a proposed use which is not listed in the Table of EQR Units, the requirements of Subsection A above shall be satisfied by the dedication or transfer of water or water rights to the City of sufficient priority as will produce, after dedication or transfer of such water or water rights to the City, an amount of water per year sufficient to supply the requirements of such uses, as determined by the Director of Public Works after consultation with a person knowledgeable in water rights.

F. If a person required to dedicate or transfer water or water rights pursuant to this Chapter can establish by a preponderance of the evidence that the actual volume of raw water needed to serve a proposed use or uses will be less than that calculated on the basis of EQR units as provided for in Subsection D of this Section, he or she shall be entitled to a proportionate reduction in the dedication or transfer requirement, as approved by the Water and Sewer Board.

G. The dedication or transfer requirement shall be satisfied by the person seeking approval of the extension of water service, annexation or a change in land use, whether or not that person will be the ultimate user of the City water service.

H. All costs and expenses to transfer water rights (including shares in ditch and reservoir companies or contract rights to water) to the City to satisfy the requirements of Subsection A of this Section, or to transfer water rights which the City has otherwise accepted in accordance with Section 13.08.070 of this Chapter, shall be paid by the person required to dedicate or transfer water rights to the City pursuant to this Chapter. All costs and expenses necessary to change such water rights so they can be diverted and used by the City for municipal use shall be paid by the person required to dedicate or transfer water rights to the City pursuant to this Chapter, and the City shall be the applicant or co-applicant in any application to change such water rights. The Water and Sewer Board, with the consent of the City Council, shall establish and adopt a schedule of costs and expenses to be paid by any person required to dedicate or transfer water rights to the City if such person does not desire to complete the necessary change of water rights at the time of dedication or transfer of the water rights to the City. The schedule shall insure that the City is fully compensated for the costs and expenses necessary to change the water rights so they can be diverted and used by the City for municipal use, and shall be reviewed annually by the Water and Sewer Board and updated as required. Upon dedication or transfer of the water rights to the City and payment of the costs and expenses set forth in the schedule of costs and expenses, the Director of Public Works may approve an extension of water service.

I. Any determination made by the Director of Public Works pursuant to this Section shall be submitted to the Water and Sewer Board, which shall review the determination of the Director of Public Works at its next regular or special meeting and shall submit the determination of the Director of Public Works and its recommendation to the City council at its next regular meeting, and the determination of the Director of Public Works shall not become final until the same has been ratified by the City Council. Any interested person shall have the opportunity to be heard before the City Council prior to any decision ratifying a determination by the Director of Public Works. (Ord. 026-00, 2000; Ord. 1043-97, 1997)

#### **13.08.050 Dedication of water or water rights for open space.**

If the owner of any property proposed to be annexed or on which the land use is proposed to be changed dedicates property to the City pursuant to this Code to be used for open space, park, aesthetic, recreation or irrigation purposes, the owner shall also comply with the provisions of this Chapter for the property to be dedicated. (Ord. 026-00, 2000; Ord. 1043-97, 1997)

#### **13.08.060 Exceptions.**

A. The City Council may substitute or waive any conditions or requirements deemed necessary to meet the purposes of this Chapter.

B. This Chapter does not apply to an extension of water service for which the dedication or transfer requirement has been previously satisfied. (Ord. 026-00, 2000; Ord. 1043-97, 1997)

#### **13.08.070 Procedure.**

A. The City shall have the right, in its sole discretion, to accept or reject any water rights proposed for dedication or transfer to the City in accordance with the provisions of this Chapter which the Director of Public Works has determined are not of sufficient priority. If the Director of Public Works determines that the water rights proposed for dedication or transfer to the City fail to satisfy the dedication or transfer

requirement, the following alternatives, or combination thereof, may be used to otherwise satisfy the dedication or transfer requirement:

1. The person required to dedicate or transfer water or water rights to the City may satisfy that requirement by payment to the City of a cash amount equal to the fair market value of water or water rights sufficient to satisfy the dedication or transfer requirement, including the costs to transfer such water rights to the City to satisfy the dedication or transfer requirement. The City council may by resolution limit the cash amount that will be accepted by the City to satisfy the dedication or transfer requirement.

2. The Director of Public Works may, in his or her discretion, negotiate with the new user to establish other terms or conditions which will comply with the dedication or transfer requirement.

B. A person required to dedicate or transfer water rights to the City pursuant to this Chapter shall, upon notice by the Director of Public Works that the City Council has ratified his or her determination that the water rights to be dedicated or transferred are sufficient to satisfy the requirements of Subsection 13.08.040.A or that the City has otherwise accepted the water rights for dedication or transfer, dedicate or transfer the water rights required to satisfy the provisions of this Chapter by delivering documents to the Director of Public Works sufficient to make a conveyance of such water rights to the City. If all proceedings required under the laws of the State to change the water rights so that they can be diverted and used by the City for municipal use have not been completed, legal title to the water rights shall be transferred to the City, but no extension of water service shall be furnished except as provided in Subsection C below.

C. No extension of water service, including any new or additional water service, shall be furnished until the requirements of this Chapter have been complied with; provided, however, that if there are matters pending resolution in court concerning the water rights to be dedicated or transferred, or if there is other delay beyond the control of the person required to transfer or dedicate water or water rights to the City by this Chapter, the Director of Public Works may approve an extension of water service prior to the dedication or transfer of water or water rights to the City.

D. All costs and expenses related to the conveyance of water or water rights dedicated or transferred to the City shall be borne by the person required to dedicate or transfer water or water rights to the City pursuant to this Chapter.

E. Any decision made by the Director of Public Works under the delegation of powers contained within this Chapter shall be submitted by him to the City Council at its next regular meeting, and the decision shall not become final until the same has been ratified by the City Council. Any interested parties shall have the opportunity to be heard with respect to the decision. (Ord. 026-00, 2000; Ord. 1043-97, 1997)

#### **13.08.080 Agricultural and open space property.**

If the owner of the property proposed to be annexed or on which the land use is proposed to be changed, desires to retain the land or any portion thereof in agricultural production or as open space prior to development, he or she shall be permitted to lease back, on an annual basis and for irrigation, aesthetic and recreational purposes only, water rights dedicated or transferred to the City pursuant to this Chapter. The terms of the lease shall be negotiated with the Director of Public Works. (Ord. 026-00, 2000; Ord. 1043-97, 1997)

### **13.08.090 Option to purchase.**

A. Time. Prior to any extension of service, any person required to comply with the provisions of this Chapter shall also grant to the City the option for one (1) year to purchase any and all water rights which are appurtenant to the land to be annexed, or on which the land use is proposed to be changed, but which are in excess of the dedication or transfer requirement of this Chapter. The option may be exercised by the City at any time for a period of one (1) year following the date of the grant to the City with regard to any or all of the water rights subject to the grant.

#### **B. Price.**

1. The option price shall be that price agreed upon by the parties. If the parties cannot agree upon an option price within thirty (30) days after notice of the City's intent to exercise its option is received by the owner, appraisal at the City's expense will establish the price that reflects the fair market value of the water rights.

2. The appraisal shall be conducted by one (1) appraiser appointed by the City, one (1) appraiser appointed by the owner of the water rights and a third appraiser who shall be appointed by both parties. The average of the three (3) appraisals shall be the option price.

#### **C. Right of first refusal.**

1. Grant of right. In addition to the grant to the City of the option to purchase water rights as provided in Subsection A above, any person required to comply with the dedication or transfer requirement shall also grant to the City a right of first refusal regarding any water rights subject to said option to purchase. If the City for any reason should choose not to exercise its option to purchase water rights as provided in Subsection A above, the City shall have the right of first refusal in the event the water rights are to be sold separately from the land, for a period of ten (10) years following annexation or final approval of a development plan.

2. Notice period. If the owner of the water rights subject to the right of first refusal wishes to sell the water rights to a third party, he or she shall give the City at least ninety (90) days' notice of his or her intention to effect a sale of the water rights by delivering to the City a bona fide written offer to purchase made by a third party.

3. Exercise of right. During the ninety-day notice period provided for in Paragraph 2 above, the City shall enjoy its right of first refusal entitling it to purchase the water rights proposed for sale. If within ninety (90) days following notice by the owner of his or her intention to sell his or her water rights, the City chooses to exercise its right to purchase, then the City shall pay to the owner the fair market price of the water rights prevailing at the time of the offer, which price shall be at least equal to the amount tendered to the owner in the bona fide offer by the third party. In the event that the City determines not to exercise its right to purchase the water rights offered for sale, the owner shall be free to sell the water rights to the third party; provided, however, that any such sale to the third party shall be for a price which is at least equal to that price which was tendered to and refused by the City. (Ord. 026-00, 2000; Ord. 1043-97, 1997)